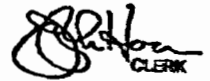


**FILED**

**NOV 13 2009**

  
CLERK

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

RICHARD LUPKES and  
SHIRLEY LUPKES,

Plaintiffs,

vs.

STATE FARM MUTUAL AUTOMOBILE  
INSURANCE COMPANY,

Defendant.

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

CIV. 09- 4165

**COMPLAINT AND DEMAND  
FOR TRIAL BY JURY**

Come now Plaintiffs, by and through their attorneys of record, to state and allege as follows:

1. That Plaintiffs are residents of Rushmore, County of Nobles, State of Minnesota, and were residents of the State of Minnesota at all material times herein.
2. That Defendant State Farm Mutual Automobile Insurance Company is an insurance company doing business in the State of South Dakota at all the times pertinent herein, incorporated in Illinois, with its principal place of business in a foreign state other than Minnesota.
3. That this Court has jurisdiction over this claim pursuant to 28 USC § 1332, because of diversity of citizenship, and that the matter of controversy exceeds the sum of \$75,000.00.
4. That on February 27, 2009, in Minnehaha County, State of South Dakota, Plaintiffs were seriously injured in a motor vehicle accident, as they were traveling in a

vehicle eastbound on Interstate 90, near Mile Marker 402, when Lyle Eugene Chapin, who was traveling westbound on Interstate 90, lost control of his vehicle and crossed the median into the eastbound lanes of traffic and struck Plaintiffs' vehicle.

5. That Lyle Eugene Chapin was negligent in failing to observe the rules of the road, which was the proximate cause of Plaintiffs' injuries.

6. Plaintiffs are informed and believe, and based upon such information and belief, allege that Lyle Eugene Chapin was uninsured at the time of the accident described above.

7. That Plaintiffs suffered severe and permanent injuries, including: medical, hospital, and therapeutic treatment, together with permanent injury and disability, loss of earnings, property damage, pain and suffering, loss of enjoyment of life, and loss of consortium since the time of the injury as a proximate cause of Lyle Eugene Chapin's negligence.

8. At the time of the accident, a policy of insurance number 822-2171-A25-23E, issued by Defendant to Plaintiffs, was in full force and effect, which included coverage for uninsured motor vehicle benefits.

9. That Defendant paid medical bills on behalf of both Plaintiffs pursuant to medical payments provision of their Minnesota policy, and that by reason of their contract of insurance with Defendant, Plaintiffs' claims for bodily injury are against this Defendant Insurer.

10. That by reason of the uninsured motorist provisions of their policy, Plaintiffs are entitled to full payment of their tort claims by their insurer as set forth above.

11. That Defendant breached its duty of good faith and fair dealing when it denied Plaintiffs' uninsured motorist claim by failing to properly investigate and evaluate the claim; taking a frivolous position; acting in reckless disregard of the existence of a reasonable basis, or knowingly and recklessly disregarding the lack of a reasonable basis for denial.

12. That State Farm Mutual Automobile Insurance Company's actions are unreasonable and vexatious, entitling Plaintiffs to attorney fees in an amount to be determined hereinafter.

WHEREFORE, Plaintiffs pray for judgment as follows:

1. For actual damages and punitive damages in an amount to be proven at trial;
2. For prejudgment interest on all sums certain that are unpaid;
3. For all costs and fees, including attorney fees under SDCL 58-12-3, that Plaintiffs may be entitled to under South Dakota law. Plaintiffs request a separate hearing under SDCL 58-12-3.1; and
4. For such other and further relief as the Court may deem just and equitable.

Dated at Sioux Falls, South Dakota, this 11th day of November, 2009.

HOY TRIAL LAWYERS, PROF. L.L.C.

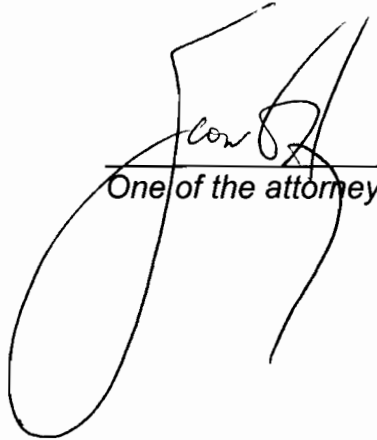


---

Scott G. Hoy  
1608 W. Russell Street  
Sioux Falls, SD 57104-1440  
(605) 334-8900  
E-mail: [scott@hoylaw.com](mailto:scott@hoylaw.com)  
*Attorneys for Plaintiffs*

DEMAND FOR JURY TRIAL

COME NOW Plaintiffs, by and through their counsel of record, and hereby respectfully demand trial by jury of all issues so triable.

  
\_\_\_\_\_  
One of the attorneys for Plaintiffs